

## BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: )  
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 Opinion requested by: )  
 Gary G. Gillmor, Mayor, )  
 City of Santa Clara )  
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No. 76-089  
 April 6, 1977

BY THE COMMISSION: We have been asked the following question by Gary G. Gillmor, Mayor of the City of Santa Clara:

Must I, as a member of the City Council of Santa Clara, disqualify myself from voting on a request to rezone property which, if granted, would permit construction of a senior citizens' high-rise housing complex with associated commercial facilities on the ground floor?

The Santa Clara Methodist Retirement Foundation, Inc., has requested that certain City-owned property be rezoned from C.D. (Commercial Downtown) to P.D. (Planned Development). Rezoning would permit construction of a nine-story senior citizens' housing complex comprised of 176 one-bedroom units, related senior citizens' facilities on the ground floor, and 6,400 square feet of ground floor space for rental to small commercial shops. The proposed project will be located on a two-acre parcel of land at the corner of Jackson Street and Homestead Road.

Franklin Mall, a business and commercial complex, is located directly across Jackson Street, several hundred feet from the planned development. Mayor Gillmor is the owner of six parcels of real property in the Franklin Mall complex, and each parcel is worth more than one thousand dollars (\$1,000). Four of the six Gillmor properties are leased to others and are used for business purposes. The businesses include: a beauty shop, which has a ten-year lease that expires in June, 1977; a florist shop, which has a lease that expires in September, 1977; a combination watch, hearing aid and repair shop, which has a lease that expires in 1980; and a radio station, which has a lease that expires in 1977. Mayor Gillmor has received rental income in excess of two hundred fifty dollars (\$250) from each of the four

rental properties during the last 12 months. The fifth parcel is used by Mayor Gillmor to operate a real estate business, Gary Gillmor and Associates, a sole proprietorship. Finally, the sixth parcel contains a small restaurant owned by Mayor Gillmor and his wife. More specifically, they operate a sandwich, soup and salad shop which is licensed to sell beer and wine. Mayor Gillmor's investment in his real estate business and in his restaurant both are worth more than one thousand dollars (\$1,000). Also, Mayor Gillmor has received more than two hundred fifty dollars (\$250) each from his real estate business and from his restaurant during the last 12 months.

#### CONCLUSION

Mayor Gillmor has a financial interest in the decision to rezone the property in question within the meaning of Government Code Section 87100 and, therefore, must disqualify himself from making, participating in making or in any way attempting to use his official position to influence that decision.

#### ANALYSIS

Government Code Section 87100<sup>1/</sup> contains the basic conflict of interest prohibition and provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

There is no question but that Mayor Gillmor is a public official<sup>2/</sup> and that by voting on the rezoning issue he would be making a governmental decision.<sup>3/</sup> Accordingly, the determinative issue for us to resolve is whether the Mayor has a "financial interest" in this decision.

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> Section 82048 provides that: "'Public official' means any member, officer, employee or consultant of a state or local government agency."

<sup>3/</sup> See 2 Cal. Adm. Code Section 18700(b) for a description of what constitutes making a governmental decision.

Government Code Section 87103 defines "financial interest":

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

Mayor Gillmor's multiple interests clearly bring him within the provisions of Sections 87103(a), (b), (c) and (d) relating to investments in business entities, interests in real property, sources of income and management positions, respectively. We turn, therefore, to the question of whether it is "reasonably foreseeable" that the rezoning decision will have a "material" financial effect, which is distinguishable from its effect on the public generally, on:

- (a) the real property in which Mayor Gillmor has an interest;
- (b) any of the sources of income to Mayor Gillmor;  
or
- (c) any of the business entities in which Mayor Gillmor has an investment or holds a management position.

With respect to foreseeability, it seems abundantly clear that this criterion is satisfied as to all of the above interests. The proposed senior citizens' housing complex is located within the City's redevelopment zone, and is part of the last portion of the zone to be redeveloped. Franklin Mall itself, with its multiple businesses and commercial properties, was developed earlier as part of the general redevelopment project. Redevelopment zones are created for the precise purpose of upgrading portions of a community and creating a positive financial impact on investments and property values in the zone. Ideally, new businesses are attracted, increased sales and services result, the value of the redeveloped property, and property in close proximity to it, increases because of more productive use, and the community, in general, benefits through a broadened tax base. Thus, it is intended and anticipated that redevelopment will have a financial impact on real property and businesses located in and near the redevelopment zone.

In the present case, we think it is "reasonably foreseeable" that these types of positive financial consequences will occur if the property in question is rezoned and the senior citizens' housing complex constructed. Moreover, we think it is clear that Mayor Gillmor's interests will be affected. The decision to rezone and to construct the new housing complex foreseeably will bring additional renters, visitors, shoppers and foot traffic, in general, into the area. Accordingly, more potential customers will be available for Mayor Gillmor's sources of income (the beauty shop, the

florist shop and the combination watch, hearing aid and repair shop). In addition, Mayor Gillmor's restaurant, which is both a source of income and an investment, undoubtedly will benefit from the increased number of persons in the area. Finally, if these various businesses do enjoy an increase in business, their locations will become more desirable and real property values, including those of Mayor Gillmor's property, foreseeably will be enhanced.

We also conclude that these foreseeable financial effects will be "material" within the meaning of Section 87103. 2 Cal. Adm. Code Section 18702 clarifies the concept of materiality and provides, in pertinent part:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if, at the time the official makes, participates in making or attempts to use his or her official position to influence the making of the decision, in light of all the circumstances and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias....

In applying this test to the facts presented herein we think the following observations are pertinent. Mayor Gillmor has multiple financial interests which could be affected by the proposed project, including interests in real property, investments and sources of income. Moreover, these financial interests are located in close proximity to the proposed project (within 100 yards). Finally, as we have indicated in our discussion of the question of foreseeability, it is likely that proceeding with the proposed project will produce beneficial financial effects for at least some of Mayor Gillmor's financial interests.

Under these circumstances, we think it is clear that the existence of Mayor Gillmor's multiple financial interests might interfere with his ability to perform his duties relative to the rezoning issue "in an impartial manner free from bias."<sup>4/</sup> Accordingly, we conclude that the Mayor

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<sup>4/</sup> Although 2 Cal. Adm. Code Section 18702 also establishes specific guidelines to consider in determining materiality, we do not rely on those guidelines in this  
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is prohibited from making, participating in making or in any way attempting to use his official position to influence the rezoning decision.<sup>5/</sup>

Approved by the Commission on April 6, 1977.  
Concurring: Lapan, Quinn and Lowenstein. Commissioner  
Remcho abstained.

  
Daniel H. Lowenstein  
Chairman

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(footnote 4 continued)

opinion. It is foreseeable that there will be a financial effect on Mayor Gillmor's financial interests (see text, supra at 4-5), and the facts presented to us indicate that the effect will be more than marginal. Indeed, it is possible that the dollar and percentage amounts contained in 2 Cal. Adm. Code Section 18702(b) will be satisfied. However, this is merely speculative at this time, not foreseeable, since it is not presently possible to quantify the effects of the rezoning decision with any degree of certainty. Under these circumstances, we think reliance on the specific guidelines is inappropriate and we, therefore, base our opinion herein on materiality on the general test of 2 Cal. Adm. Code Section 18702(a).

<sup>5/</sup> We observe that the financial effect of a rezoning decision on Mayor Gillmor's interests will be distinguishable from its effect on the public generally. Individuals owning real property and having investments in the area affected by the rezoning decision do not constitute the public generally or a significant segment thereof. Cf. Opinion requested by William Owen, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976). Moreover, even if they did, the extent of Mayor Gillmor's holdings would clearly distinguish the effect of the rezoning decision on those holdings from its effect on the interests of others with holdings in the area.